

Exhibit R2

From: Richard Rimer

Sent: Thursday, June 15, 2023 1:33 PM

To: James D'Loughy <james@copycatlegal.com>

Cc: Kathy Milton <kathy@initiatingprotection.com>; Lauren Hausman <lauren@copycatlegal.com>

Subject: RE: Prepared Food Photos, Inc. v. Healthy Solutions The Chiropractic Wellness Center, Inc.

FRE 408 SETTLEMENT COMMUNICATION

Mr D'Loughy -

This is in response to your email from Saturday, refusing Health Solutions' offer to settle the matter, and countering with an offer of \$23,976.

HS stands by its claims that it is and was using this image under a license. We admit that HS and its web developer are having difficulty locating it. This is not surprising since it has been over seven years since our web developer obtained the license in question.

Even if, *arguendo*, HS did not have a license, your demand is not reasonable. Your only citations to the contrary are uncontested decisions. Even then, as stated in your client's *Buckingham Brothers* decision, "anything approaching \$30,000 in damages" is improper. The standard for damages claims is "what a willing buyer would have been reasonably required to pay a willing seller for plaintiff's work...not what the owner would have charged." *Dash v. Mayweather*, 731 F.3d 303, 313 (4th Cir. 2013). In 2016 when HS's web developer licensed the image, PFP's library and \$999/ month offer did not even exist. Our research shows that the picture in question could have been licensed at that time (and today) for approximately \$18. HS has already paid that amount through the license held by its web developer.

To summarize, HS used the picture under license and has already paid the appropriate fees for this use. Our research reveals that PFP's current model is to attack websites with images that have been posted for multiple years, and then claim damages based on an inflated model that did not exist at the time the image was used (See [article](#) reporting PFP's withdrawal in a similar situation, i.e., a single location medical provider). PFP knows these licenses are difficult to produce, and that the damage model is untenable.

Accordingly, HS refuses your offer and will not make a monetary counteroffer. Instead, HS demands that PFP retract its threat of suit. If PFP does sue, rest assured that it will not have another uncontested decision to parade in front of PFP's future targets. Rather, HS will vigorously defend PFP's outlandish damage claims, thus resetting the market for PFP's business.

Respectfully,

Richard

F. Richard Rimer, Jr.

Managing Partner, Initiating Protection

(678) 965-3268

Schedule a meeting: [Calendly - Richard Rimer](#)

From: James D'Loughy <james@copycatlegal.com>

Sent: Saturday, June 10, 2023 11:00 PM

To: Richard Rimer <Richard@initiatingprotection.com>

Cc: Kathy Milton <kathy@initiatingprotection.com>; Lauren Hausman <lauren@copycatlegal.com>

Subject: RE: Prepared Food Photos, Inc. v. Healthy Solutions The Chiropractic Wellness Center, Inc.

FRE 408 SETTLEMENT COMMUNICATION

Dear Mr. Rimer—

I am in receipt of Healthy Solution's justification of its low settlement offer and will respond. If Prepared Food's photograph was licensed by Healthy Solutions or its web developer (as you claim), I would imagine you would have furnished me with a license for the photograph and this case would be withdrawn. We'll also have to agree to disagree on the valuation of the photograph. Even if it's so that the photograph may be licensed for less than what Prepared Food is demanding, Healthy Solutions chooses to ignore statutory damages. ("[T]o put infringers on notice that it costs less to obey the copyright laws than to violate them, a statutory damage award should significantly exceed the amount of unpaid license fees."). See Buttnugget Publ'g v. Radio Lake Placid, Inc., 807 F. Supp. 2d 100, 110-11 (N.D.N.Y. 2011)

I must admit, the offer of \$1,500 is rather disappointing to Prepared Food and does not appear to be based on any semblance of reality. Healthy Solutions infringed on Prepared Food's photograph for commercial purposes. Had Healthy Solutions subscribed to our client's photographic library (which would be required to use any single photograph), it would owe Prepared Food far more than \$1,500.

This is not a case involving whether infringement occurred or not. There was infringement, thus entitling our client to a money judgment ranging from \$750.00 (innocent use) to \$30,000.00 (non-willful maximum) to \$150,000.00 (willful).

But let's set aside what Healthy Solutions would have paid had it not chose to use the image unauthorizedly. From the moment we file the Complaint, that is \$403.00 (filing fee) and approximately \$100.00 (service fee) that we are mandated to recover. Assuming the parties take depositions of each other, that is another \$2,000.00 in recoverable costs. So, without considering judgment amounts, Healthy Solutions is starting at a \$2,500.00 deficit. We can litigate its innocent infringer and valuation defenses, but I would anticipate that Healthy Solutions is incurring an additional \$15,000 - \$30,000 of attorneys' fees with your firm. I am thus curious what the justification is for a \$1,500.00 offer when, on Healthy Solution's best day, it appears to be responsible for at minimum \$17,500.00 out-of-pocket defending the lawsuit, notwithstanding the license fees for the use of the infringing photograph.

Please note this isn't our client's first rodeo. They have filed dozens of prior lawsuits for copyright infringement when a defendant either does not respond or refuses to negotiate in good faith (as here). While the above is what I consider to be Healthy Solution's "best case" scenario (which ignores entirely our client's license fee), the reality is not quite so favorable.

While I don't see this as a \$150,000.00 case (for the same reason that it is not a \$1,500 case), we would certainly argue for the annual license fee of \$11,988.00. But whether we are talking about Healthy Solution's best case or worst-case scenario, the notion of them settling this matter for \$1,500.00 is a complete non-starter.

Last year, a NY Federal judge issued the attached default judgment (attached) for **\$75,792.50** (other side did not respond/defend) which walks through the analysis of how to calculate damages in Prepared Food's subscription model. In that case, we could confirm use for three years, and the judge awarded **\$75,792.50** (3x the annual subscription x 2 for the statutory multiplier as a punishment/deterrence, plus attorney's fees and costs). So, suffice it to say, we believe that Healthy Solution's exposure is could be similar not inclusive of potential attorney's fees and costs.

Because I prefer to get down to the brass tacks of this matter, I am authorized to convey a realistic settlement offer of **\$23,976.00**, an amount equal to a two-year license fee. It is an opportunity for Healthy Solution's to extricate itself from this matter prior to incurring substantial fees, costs, and a possibly a monetary judgment. Given Healthy Solution's initial offer, I'm not particularly confident that we're seeing this case through the same lens, but certainly feel free to discuss the offer with your client during this week. This settlement offer is open for acceptance until close of business on **Thursday, June 15, 2022.**

Please get back in touch with me and let me know.

Respectfully,



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From: Richard Rimer <Richard@initiatingprotection.com>

Sent: Friday, June 9, 2023 2:35 PM

To: James D'Loughy <james@copycatlegal.com>

Cc: Kathy Milton <kathy@initiatingprotection.com>; Lauren Hausman <lauren@copycatlegal.com>

Subject: RE: Prepared Food Photos, Inc. v. Healthy Solutions The Chiropractic Wellness Center, Inc.


FRE 408 SETTLEMENT COMMUNICATON

Mr D'Loughy –

We respect the intellectual property rights of third parties, and we take your communication with the highest level of seriousness. We point out that our client responded via telephone to your first communication within days. Health Solutions soon thereafter hired this firm and we had a written response to you 18 days after your original letter. The fact that this matter has been open for two months is in no way an indication of Health Solutions' inattentiveness to the matter.

We revert back to our letter of April 25 and restate that Health Solutions used the picture in question under a license. Specifically, the web designer who prepared the website in 2016 obtained all the images used on the website under license from stock photography libraries. As you can see from the following screen shots, a quick search of the picture shows it is currently available in over 4,400 locations on the web. This includes the following stock photography libraries on which the picture is still available for license today and was also available for license prior to the time the website was launched:

← → ↻ 🔒 tineye.com/search/d6fee93631c83183de57f9cce5b2c24

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TinEye

Search

 Upload



1 of 4,477 results

Searched over **60.5 billion** ima

- ☐ Include 394 results not av
- ☐ Show only 7 results found
- ☐ Show only 3 results found

Sort by oldest ▾

istockpro.com



STOCK

www.istockpro.com

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file_search.php - First found <
view all 7 matches

Filename: **stock-photo-44618**
(110 x 76, 14.3 kB)

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Gmail Maps { H Richard Rimer - Hal... CosmoLex - Login



TinEye

Search

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2 of 4,477 results

Searched over 60.5 billion ima

☐ Include 394 results not av

☐ Show only 7 results found

☐ Show only 3 results found

Sort by oldest ▼

agrostock.es



www.agrostock.es

fabricacion-de-correctores-¿

Filename: **correctores.jpg** (61



www.agrostock.es

fabricacion-de-correctores-¿

The reason for showing this is to make two points. First, Prepared Food Photos is not the only source from which Health Solutions could have obtained a licensed copy of this picture in 2016. Second, there are multiple stock photography libraries which offer this picture as an individual item, and at a price well below the \$11,988/ year price at which you are valuing lost revenue.

With that being said, Health Solutions would like to end this matter. Without admitting any liability, Health Solutions proposes that it pay Prepared Food Photos a one-time payment of \$1500. This offer ends on June 16, 2023. We look forward to your prompt response to our offer.

Best regards.
Richard

F. Richard Rimer, Jr.

Managing Partner, Initiating Protection

(678) 965-3268

Schedule a meeting: [Calendly - Richard Rimer](#)

From: James D'Loughy <james@copycatlegal.com>

Sent: Sunday, June 4, 2023 3:19 PM

To: Richard Rimer <Richard@initiatingprotection.com>

Cc: Kathy Milton <kathy@initiatingprotection.com>; Lauren Hausman <lauren@copycatlegal.com>

Subject: RE: Prepared Food Photos, Inc. v. Healthy Solutions The Chiropractic Wellness Center, Inc.

FRE 408 SETTLEMENT COMMUNICATON

Dear Mr. Rimer—

I love the “my client must refuse your demand for payment” response as if that somehow does anything other than causing a lawsuit to be filed against Healthy Solutions for copyright infringement. If you believe that this demand is going to disappear, I encourage you to review PACER (www.pacer.gov) to understand that our client does not make empty promises of litigation. My preference is to avoid a lawsuit altogether and resolve this amicably.

Prepared Foods has spent decades and millions of dollars developing its library of food photographs which they license exclusively on a subscription basis by offering their library of photos @ \$999/mo with a 12-month minimum commitment (So that you know where I am coming from on behalf of my client, Prepared Food Photos publishes its terms on the website (<https://preparedfoodphotos.com/terms.of.use.php>). They do not license individual photos. Their clients are generally ad agencies that cater to retail grocery chains (using the library to build the weekly ads). It's rare that a retail grocer itself licenses the work as it wouldn't be particularly cost effective. But given the above, they calculate their actual damages/lost revenue for even 1 photo being used for 1 day as $\$999 \times 12 = \$11,988.00$. If someone uses the photo for 2 years, double that. And so on. That's a fairly conservative estimate of the damages exposure even traveling under actual damages (even if Healthy Solutions published the image prior to its copyright registration).

Prepared Food Photos does not hesitate to file lawsuits for copyright infringement when the 'infringer' (for lack of a better word) refuses to negotiate a reasonable settlement in good faith. If someone takes the position that 'we're not going to pay anything because the used occurred long ago and prior to the registration,' this client has repeatedly instructed us to pursue the filing in federal court and proceed to get a judgment. Don't take my word for it, refer to PACER.gov.

Prepared Food is open to entertain a settlement offer to resolve all claims in an amount equivalent to a reasonable license as described above. I am available this week if you would like to schedule a phone conference to discuss a way out of this for Healthy Solutions. Otherwise, if healthy Solutions chooses to ignore Prepared Food's demand, or continues to take the position you espouse in your letter, we will proceed by filing suit.

It has now been two months since the demand letter was received by Healthy Solutions, and Prepared Food is now directing us to file suit if we cannot soon work out a resolution for just compensation for Healthy Solutions use of the photograph. Please get back to me by the end of the week (**June 9, 2023**) and let me know what you wish to do with this case.

Respectfully,

 **CopyCat**
LEGAL
James D'Loughy, Esq.

Shareholder

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From: Richard Rimer <Richard@initiatingprotection.com>

Sent: Tuesday, April 25, 2023 2:30 PM

To: help@copycatlegal.com

Cc: Kathy Milton <kathy@initiatingprotection.com>

Subject: Prepared Food Photos, Inc. v. Healthy Solutions The Chiropractic Wellness Center, Inc.

Dear Sirs:

Please our response sent on behalf of Healthy Solutions The Chiropractic Wellness Center, Inc. dba Health Solutions. Please direct all future correspondence regarding this matter to my attention.

Regards.

Richard

F. Richard Rimer, Jr.

Managing Partner, Initiating Protection

Richard@InitiatingProtection.com

(678) 965-3268

Schedule a meeting: [Calendly - Richard Rimer](#)

Where Your Mark Gets Its Start SM